

**"Arkansas Prepaid Funeral Benefits Law".**

**23-40-102. Purpose.**

The purpose of this chapter is to provide for the regulation of the sale of prepaid funeral benefits by the Insurance Commissioner.

**23-40-103. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Cash accommodation items" means flowers, honorariums, death certificates, sales taxes, grave opening and closing, cemetery charges, and other items incidental to the funeral and disposition of the beneficiary which are to be furnished or provided by a "third party" at the time of death;

(2) "Contract price" means the aggregate moneys to be paid and the aggregate stated value of all other direct or indirect consideration to be assigned by purchasers of prepaid funeral benefits as provided in the contract, exclusive of any finance charge;

(3) "Contract proceeds" means the portion of the contract price collected by the seller from a contract for the sale of prepaid funeral benefits;

(4) "Licensee" or "permittee" means a person holding a valid permit or license issued pursuant to this chapter;

(5) "Liquid investments" means investments which can be sold at cost or greater, liquidated without penalty, and collected within five (5) banking days;

(6) "Net investment income" means:

(A) All revenue and earnings of the trust fund, including, but not limited to interest, dividends, and capital gains; minus

(B) Investment expenses, trustee's fees, capital losses, and all revenue and earnings on cash accommodation funds;

(7) "Prearrangement" means an arrangement whereby a person, for himself or on behalf of some other person, makes arrangement for funeral and burial services prior to the death of such person, without consideration and without an agreement or itemization specifying any particular service or merchandise, or the cost thereof, through the assignment or transfer, including such conditions as the assignor or transferor may choose to impose, of ownership to a licensee of an insurance policy or annuity contract, or proceeds thereof, or by the designation of a licensee as beneficiary of any such insurance policy or annuity contract. An assignment of an insurance policy or annuity or the proceeds thereof to a funeral home or the designation of a funeral home as beneficiary as described herein is not a prepaid funeral

benefits contract.

(8) "Seller" means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits pursuant to this chapter;

(9) "Surplus" means the funds or other property in excess of the undistributed net investment income and aggregate contract proceeds held in the trust fund;

(10) "Trustee" means a state or national bank or savings and loan association in this state, or, in the reasonable discretion of the Insurance Commissioner upon such terms and conditions as he may require, a "securities brokerage firm" licensed and in good standing with appropriate state and federal regulatory authorities.

(11) "Net worth" means the difference between the applicant's total assets and total liabilities as reflected in a balance sheet prepared in accordance with accounting principles and procedures approved by the Insurance Commissioner.

(12) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of funeral services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary. It does not include a prearrangement.

(13) "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services and/or funeral merchandise shall be performed, provided, or delivered.

**23-40-104. Insurance code not affected.**

Nothing in this chapter shall apply to any licensed insurance company or alter or affect any provisions of the Arkansas Insurance Code.

**23-40-105. Burial associations exempted.**

Nothing in this chapter shall apply to organizations or associations operating in this state as burial associations pursuant to Section 23-78-101 et seq.

**23-40-106. Penalties.**

(a) Any officer, director, agent, or employee of any organization subject to the terms of this chapter who makes, or attempts to make, any contract in violation of this chapter, or refuses to allow an inspection of the organization's records, or who violates any other provisions of this chapter, shall be punished by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500), or by imprisonment in the county jail for not

less than one (1) month and not more than six (6) months, or by both fine and imprisonment.

(b) Each violation of any provision of this chapter shall be deemed a separate offense and prosecuted individually.

**23-40-107. Division of Prepaid Funeral Benefits.**

The Insurance Commissioner shall be responsible for the regulation of the sale of prepaid funeral benefits and there is hereby established, within the State Insurance Department, the Division of Prepaid Funeral Benefits. This division shall be funded annually by the fees required to be paid by organizations subject to this chapter, which shall be placed in trust and disbursed pursuant to this chapter.

(a) There is hereby established on the books of the Treasurer of State, the Auditor of State and the Chief Fiscal Officer of the State a fund to be known as the 'State Insurance Department Prepaid Trust Fund' to be used to pay the expenses of the State Insurance Department in the discharge of its regulation of prepaid funeral benefits contracts.

(b) No money shall be appropriated from this fund for any purpose other than to pay for personal services, operating expenses, maintenance and operations, and support of and improvements to the Division of Prepaid Funeral Benefits of the State Insurance Department.

(c) The fund established pursuant to this section shall be administered, disbursed, and invested under the direction of the Insurance Commissioner and the Treasurer of the State.

(d) All income derived through the investment of the State Insurance Department Prepaid Trust Fund, including, but not limited to, interest and dividends, shall be credited as investment income to the State Insurance Department Prepaid Trust Fund.

(e) All income derived through grants, refunds, and gifts to the State Insurance Department Prepaid Trust Fund shall be credited as income to the State Insurance Department Prepaid Trust Fund.

(f) All moneys deposited to the aforementioned fund shall not be subject to any deduction, tax, levy, or any other type of assessment, except as provided in this chapter.

(g) All fees required to be paid by licensees pursuant to this chapter shall be deposited in the State Insurance Department Prepaid Trust Fund for the support, operation, and maintenance of the Division of Prepaid Funeral Benefits of the State Insurance Department and, when paid into the State Treasury by the Insurance Commissioner, shall be maintained by the State Treasurer as the State Insurance Department Prepaid Trust Fund, separate from all other funds, and available only for the payment of the expenses of the

Division of Prepaid Funeral Benefits of the State Insurance Department.

(h) The Auditor of State shall, upon proper voucher from the Insurance Commissioner, issue his warrant on the Treasurer of State in payment of all salaries and other expenses incurred by the Division of Prepaid Funeral Benefits of the State Insurance Department in the administration of this chapter.

(i) The Insurance Commissioner shall, however, at the end of each fiscal year cause to be transferred from the State Insurance Department Prepaid Trust Fund to the General Revenue Fund Account of the State Apportionment Fund ten percent (10%) of the fees collected under this chapter.

**23-40-108. Administration.**

(a) This chapter shall be administered by the Insurance Commissioner.

(b) The Insurance Commissioner is authorized to prescribe reasonable rules and regulations concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this chapter.

(c) The Insurance Commissioner is authorized to employ the personnel necessary to carry out the provisions of this chapter and to fix their compensation within the amounts made available by appropriation.

(d) The Insurance Commissioner may make and promulgate reasonable rules and regulations for the administration of this chapter and for the purpose of carrying out the intent hereof.

**23-40-109. Permit required.**

(a) Any individual, firm, partnership, corporation, society, association, or other entity, hereinafter called an "organization", desiring to sell prearranged or prepaid funeral services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise incidental to funeral services, in this state under a sales contract providing for prepaid disposition of funeral benefits or merchandise to be delivered at an undetermined future date depending upon the death of a contracting party, hereinafter called "prepaid funeral benefits", or any organization desiring to purchase an interest in, or assume the liability of, any contract for prepaid funeral benefits, shall obtain a permit from the Insurance Commissioner authorizing the transaction of this type of business before entering into any such agreement or contract and prior to accepting money, property, or any other direct or indirect consideration and shall first apply for and obtain a prepaid funeral benefits permit or license pursuant to the provisions of this chapter.

(b) An organization desiring to sell prepaid funeral benefits or otherwise own any interest in any contract for prepaid funeral benefits shall file proof of ownership of an establishment which is in the business of providing the funeral goods or services to be contracted for and proof that the establishment is duly authorized and licensed to do such business in the State of Arkansas.

(c) It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time the contract is made.

**23-40-110. Application for initial or renewed permit.**

(a) Each organization desiring to sell prepaid funeral benefits or any organization desiring to purchase an interest in or assume the liability of any contract for prepaid funeral benefits shall file an application for a permit with the Insurance Commissioner. Each initial and renewal application for a permit shall contain such information which the Insurance Commissioner by rule or regulation shall reasonably prescribe.

(b) Each applicant shall, at the time of the application, pay a filing fee of three hundred dollars (\$300) for the initial application and two hundred dollars (\$200) for a renewal application.

(c) Permits shall expire on June 1 of each year, unless a renewal application is filed with and approved by the Insurance Commissioner prior to the permit expiration date. Each organization which has discontinued the sale of prepaid funeral benefits, but which still has outstanding contracts, shall obtain a renewal of its permit until all those contracts have been performed or otherwise fully discharged. No filing fee shall be prorated.

(d)(1) Each applicant for a permit pursuant to the provisions of this chapter shall, as of a date not preceding thirty (30) days of the application date, have a net worth in an amount equal to the greater of five thousand dollars (\$5,000) or three percent (3%) of the aggregate contract price of all contracts for prepaid funeral benefits outstanding and unfulfilled as of the end of the preceding calendar year, up to a maximum net worth of two hundred fifty thousand dollars (\$250,000).

(2) Each applicant shall, at the time of application, file a sworn and notarized certification of net worth form stating that the applicant satisfies the net worth requirements of this chapter, in a format as prescribed by the Insurance Commissioner, as evidence that the applicant has, at a minimum, the required net worth.

**23-40-111. Issuance, denial, or cancellation of permit.**

(a) The Insurance Commissioner may issue a permit

conditioned upon satisfactory completion of all requirements of this chapter prior to the applicant's offering for sale or selling prepaid funeral benefits.

(b)(1) The Insurance Commissioner may cancel a permit, deny an initial application for permit, or refuse to renew a permit for failure to comply with any material provision of this chapter or any valid rule or regulation which the Insurance Commissioner has prescribed after thirty (30) days' notice to the applicant or permittee setting forth the grounds for such cancellation, denial of application for initial permit, or refusal to renew, and after a hearing if the applicant or permittee requests a hearing.

(2) No organization shall be entitled to a new permit for a period of one (1) year after cancellation or refusal by the Insurance Commissioner to renew its permit, but shall thereafter be entitled to a new permit upon satisfactory proof of compliance with this chapter.

(c) Any person aggrieved by the action of the Insurance Commissioner may appeal therefrom to any state court of competent jurisdiction.

#### **23-40-112. Sales contracts for prepaid funeral benefits.**

(a) The Insurance Commissioner shall approve forms for sales contracts for prepaid funeral benefits.

(b) All contracts for sale of prepaid funeral benefits must be in writing and must set forth the specific merchandise and services to be provided by the seller and the contract price.

(c) All forms of sales contracts for prepaid funeral benefits shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules as prescribed by the Insurance Commissioner. No contract form shall be used without prior approval of the Insurance Commissioner.

(d)(1) All contracts for sale of prepaid funeral benefits shall provide that the seller shall furnish to the buyer the merchandise and services as set forth in the contract at the contract price, regardless of the cost of the merchandise or services at the date of the beneficiary's death.

(2) However, the seller shall not be required to furnish at the contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the contract as cash accommodation items. The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death. In the event the total funds on deposit shall exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his estate.

(e) The seller shall not be entitled to enforce a contract made in violation of this chapter, but the purchaser, or his heirs, or his legal representative shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof.

(f)(1) This chapter shall not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with the provisions of this chapter or the designation of an organization licensed pursuant to the provisions of this chapter as beneficiary of a funeral expense or other insurance policy.

(2) Such assignment, transfer, or designation shall not be deemed to be a prepaid contract.

(g) The prepaid contract shall contain a provision in substantially the following form:

NOTICE: If this contract is irrevocable and you choose to transfer this contract to a substitute provider, the entire amount of the contract will not be transferred and you may have to pay more to obtain 100% of the services provided for in the contract.

### **23-40-113. Change of ownership.**

(a) The seller shall apply for change of ownership or control when:

(1) The seller transfers all or a portion of the interest in any contract for prepaid funeral benefits;

(2) The seller transfers one (1) or more of its establishments for providing funeral goods or services;

(3) All or a portion of the equity ownership of a seller has been transferred which will result in a change of:

(A) The controlling interest of a seller when the seller is a corporation;

(B) Ownership of a seller when the seller is other than a corporation;

(4) The seller transfers all of its business assets relating to providing funeral goods or services;

(5) The seller terminates its business of providing funeral goods or services.

(b) At least fifteen (15) days prior to the proposed occurrence of an event described in subsection (a) of this section, the seller shall file a verified change of ownership application with the Insurance Commissioner which shall contain the following:

(1) The name and address of the seller;

(2) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the "transferee";

(3) A description of the property and of the proposed transaction, as set forth in subsection (a) of this section;

(4) An accounting of the trust fund and all outstanding

contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date;

(5) Any required documents or amendments thereto relating to the trust fund;

(6) A copy of any notice proposed to be sent to the contract buyers after the transfer;

(7) A filing fee of five hundred dollars (\$500.00); and

(8) Any other information which may reasonably be required by the Insurance Commissioner pursuant to rule or order.

(c) The Insurance Commissioner shall approve the seller's application for change of ownership by order if:

(1) The transferee set forth in the application holds a valid, current permit pursuant to the provisions of this chapter;

(2) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and

(3) All required information and documents are filed with and approved by the Insurance Commissioner.

(d) The Insurance Commissioner shall have the authority by rule or order to waive or reduce any or all of the requirements contained in subsection (b) of this section as not being necessary or appropriate in the public interest or for the protection of the contract buyers.

(e) The seller, or interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The Insurance Commissioner shall recover from the seller, for the benefit and protection of contract buyers, all contract proceeds which the seller has not properly accounted for and deposited into the trust fund.

#### **23-40-114. Trust funds - Creation - Deposits, withdrawals, and transfers of funds.**

(a) All contract proceeds collected under contracts for prepaid funeral benefits, including funds collected under contracts entered into before June 28, 1985, shall be deposited with a trustee within forty-five (45) days after collection, to be held, invested, and administered in a trust fund for the benefit and protection of the contract purchasers pursuant to this chapter.

(b) Each trust fund shall be created by a letter or written agreement which shall be filed with and approved by the Insurance Commissioner prior to placement of funds.

(c) The seller may deposit money or property as surplus at any time.

(d) The Insurance Commissioner shall prescribe by regulation proper affidavits and forms for the withdrawal of funds from the trust fund.

(e) The Insurance Commissioner shall first approve and



authorize in writing any transfer of funds from an existing trustee to a proposed new trustee if the proposed new trustee meets the requirements of this chapter and the rules and regulations promulgated thereunder.

(f) The licensee shall file a request for a transfer of funds, together with a filing fee of two hundred and fifty dollars (\$250.00), and any other information required by rule or regulation.

(g) This section shall not apply to the proceeds of insurance policies or contracts, and it shall not be necessary to establish a trust for the payment of such proceeds to the beneficiary designated in the policy or contract or the assignee or transferee thereof.

### **23-40-115. Trust funds - Investments.**

(a)(1) The trustees shall invest the trust fund only in the following:

(A) Demand deposits, savings accounts, certificates of deposits, and all other accounts which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(B) Bonds and obligations which are insured by, fully guaranteed as to principal and interest by, and due from the United States Government or any of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations which are secured by any of the foregoing;

(C)(i) Corporate, state, municipal, or political subdivision bonds or obligations which are rates Aa or better by Moody's or AA or better by Standard & Poor's rate services; or

(ii)(a) Bonds of any school district in this state.

(b) Provided, however, no more than thirty percent (30%) of the total trust assets may be invested in such school bonds; and

(D)(1) Mutual funds or common trust funds whose portfolio is made up of investments that are described in subdivisions (a)(1)(A)-(C) of this section.

(2) Investments described in subdivisions (a)(1)(B)-(D) of this section shall be purchased and held by the trustee which has trust powers under a trust agreement filed with and approved by the Insurance Commissioner.

(b) The trustee shall maintain the trust fund in a manner consistent with the following investment policies;

(1) Not less than one hundred thousand dollars (\$100,000.00) of the trust fund shall be invested in investments described in subdivision (a)(1) of this section. However, if the total amount of the trust fund is less than one hundred thousand dollars (\$100,000.00), then all of the trust fund shall be invested in investments described in

subdivision (a)(1) of this section;

(2) The trust fund shall contain at all times liquid investments having a cost basis not less than thirty percent (30%) of the total contract proceeds disbursed from the trust fund as described in Section 23-40-116(1)-(3) during the preceding calendar year;

(3) No investment shall be sold, exchanged, or liquidated at less than its cost if it would result in the aggregate cost basis of the trust fund minus undistributed net investment income being less than the aggregate amount of contract proceeds held in the trust fund. However, this prohibition shall not apply if the seller contemporaneously deposits with the trustee a sum of money or other property in an amount equal to the loss realized upon the sale, exchange, or liquidation of such investment;

(4) The portion of the contract proceeds collected for cash accommodation items pursuant to the terms of a contract shall be deposited in a separate account which shall be clearly identified as "cash accommodation funds" and shall set forth the name of the contract buyer. All income earned on the cash accommodation funds shall become a part of the principal of the respective accounts.

#### **23-40-116. Trust funds - Disbursements.**

The trustee shall disburse money or other property from the trust fund only as follows:

(1) Upon the death of the contract beneficiary and upon proper proof and documentation being submitted to and approved by the Insurance Commissioner, or pursuant to such other method as may be permitted under valid rules and regulations adopted by the Insurance Commissioner, in which event the contract proceeds shall be paid to the seller;

(2) Upon cancellation of the prepaid contract pursuant to Section 23-40-122 and upon proper proof and documentation being submitted to and approved by the Insurance Commissioner, or pursuant to such other method as may be permitted under valid rules and regulations adopted by the Insurance Commissioner.

(3) Upon the breach of contract by either party, in which event the contract proceeds shall be paid according to a judgment of a court of competent jurisdiction;

(4) Upon the withdrawal of net investment income or surplus by the seller, which may be made at any time and from time to time.

#### **23-14-117. Trust fund - Exemption from attachment, etc.**

(a) All contract proceeds held in trust pursuant to the provisions of this chapter, and all income derived therefrom, shall be exempt from attachment, garnishment, execution, and claims of creditors, receivers, or trustees in bankruptcy.

The trust fund shall not be seized, taken, appropriated, or applied to pay any debt or liability of the seller by any legal or equitable process or by operation of law.

(b) The seller shall notify the Insurance Commissioner within ten (10) days upon the filing of bankruptcy or upon becoming insolvent. Upon receipt of notification, the Insurance Commissioner shall notify the trustee of the trust fund, and all income earned after that date shall be held in trust by the trustee, and disbursed only upon the direction of the Insurance Commissioner.

**23-10-118. Agent for deposit of contract proceeds.**

(a) Each organization subject to this chapter shall designate an agent or agents, either by names of the individuals or by titles of their offices or positions, who shall be responsible for the deposit of contract proceeds collected under contracts for prepaid funeral benefits. The organization shall notify the Insurance Commissioner of the designation within ten (10) days after it becomes subject to this chapter and shall also notify the Insurance Commissioner of any change in the designation within ten (10) days after the change occurs.

(b) If any person acting on behalf of the seller collects any contract proceeds under a contract for prepaid funeral benefits and fails to deliver it within ten (10) days after collection to a designated agent or if any designated agent fails to deposit the contract proceeds within forty-five (45) days after collection, he shall be guilty of a misdemeanor and shall be punished as prescribed in this chapter.

**23-40-119. Annual report and fee.**

(a) Each organization shall file an annual report and an annual report fee with the Insurance Commissioner on or before March 15 of each year in such form as the Insurance Commissioner may require, showing the names or account numbers, or both, of all persons with whom contracts for prepaid funeral benefits have been made prior to January 1 of that year which had not been fully discharged on January 1, and also showing the date of contract, the name of the trustee holding the trust fund, and the amount in the trust fund under each contract on the preceding December 31.

(b) If any officer of any organization fails or refuses to file an annual report, or to cause it to be filed within thirty (30) days after he has been notified by the Insurance Commissioner that the report is due and has not been received, then, upon a finding of such failure by a court of competent jurisdiction, he shall be guilty of a misdemeanor and shall be punished as prescribed in this chapter.

(c) Effective on and after March 15, 1997, the annual

report fee shall be based on the total amount of aggregate contracts for prepaid funeral benefits outstanding and unfulfilled as of December 31 of each year and shall be payable at the time the annual report is filed. The fee shall be based on the following schedule and shall be payable to the State Insurance Department Prepaid Trust Fund:

AGGREGATE AMOUNT OF OUTSTANDING PREPAID FUNERAL BENEFITS CONTRACTS IN ARKANSAS	ANNUAL REPORT FEE DUE STATE OF ARKANSAS
Up to \$250,000	\$200.00
\$250,001 to \$500,000	\$250.00
\$500,001 to \$1,000,00	\$500.00
\$1,000,001 to \$2,500,000	\$1,000.00
\$2,500,001 to \$5,000,000	\$2,000.00
\$5,000,001 to \$10,000,000	\$3,000.00
\$10,000,001 to \$20,000,000	\$4,000.00
\$20,000,001 to \$40,000,00	\$5,000.00
Over 40,000,001	\$6,000.00

(d) Effective for all prepaid funeral benefits contracts executed on and after April 1, 1997, each licensee selling a prepaid funeral benefits contract shall remit to the State Insurance Department a one-time fee of five dollars (\$5.00) for each prepaid funeral benefits contract (including any amendments thereto) entered into by the licensee whether cash or trust funded or funded by an insurance policy or annuity contract. The fees shall be remitted quarterly to the State Insurance Department Prepaid Trust Fund for each quarter of the calendar year with a quarterly fee form as prescribed by the Insurance Commissioner. The fees shall be remitted to the State Insurance Department no later than forty-five (45) days after each quarter. The Insurance Commissioner may by rule or regulation reduce the per contract fee or adjust the fee up to a maximum of fifteen dollars (\$15.00) per contract, each year, after the effective date of this act. Such fee may be charged to the purchaser of the contract. Any fee so charged and collected shall not be deemed to be included in the term 'contract proceeds', as defined in Arkansas Code 23-40-103(3), and shall not be subject to the deposit requirements of Arkansas Code 23-40-114(a).

(e) Absent the Insurance Commissioner's approval of an extension for good cause shown, licensees failing to timely report and pay any administrative and financial regulations fees to the State Insurance Department Prepaid Trust Fund may be subject to a penalty of one hundred dollars (\$100.00) per day for each day of delinquency, payable to the State Insurance Department Prepaid Trust Fund. The Insurance Commissioner shall deposit all administrative and financial regulation fees and any penalties assessed under this section directly into the State Insurance Department Prepaid Trust Fund as special revenues.

**23-40-120. Records required - Examination.**

(a) Each organization which has outstanding contracts for prepaid funeral benefits shall maintain within this state any records which the Insurance Commissioner may require to enable him to determine whether the organization is complying with the provisions of this chapter.

(b)(1) The records shall be subject to examination by the Insurance Commissioner, or his representatives, as often as he deems advisable and not less frequently than every three (3) years; provided, however, that the Insurance Commissioner shall determine the date of original examination without regard to the date of the original permit.

(2) Each permittee examined shall pay a fee for each examination not to exceed one hundred dollars (\$100.00) per day, or fifty dollars (\$50.00) per half day, or fraction thereof, that any examiner is absent from the office of the Insurance Commissioner for the purpose of making the examination. In addition, the permittee shall pay the actual meals, hotel, and traveling expenses of each authorized examiner from Little Rock and return. The fee and expenses shall be prorated if more than one (1) examination is made on an examination trip.

**23-40-121. State General Services Fund Account.**

All filing fees and examination costs collected under this chapter shall be deposited as special revenues into the State General Services Fund Account of the State General Government Fund.

**23-40-122. Cancellation.**

A purchaser may cancel a prepaid contract, whether revocable or irrevocable, or whether cash funded or funded by insurance or an annuity, at any time prior to performance of the contract by the seller, subject to the following conditions:

(1) In the case of a cash or trust funded prepaid contract:

(A) Prior to death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of all sums paid to the seller by the purchaser, not to exceed the contract price;

(B) After death, if the prepaid contract is revocable, the purchaser, or his representative, shall be entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;

(C) If the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds

paid by him or proceeds paid to the seller, but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;

(2) In the case of a prepaid contract funded by life insurance:

(A) Prior to the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall have the right to receive not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser, or his designee, shall be entitled to receive not less than one hundred percent (100%) of the proceeds paid to the seller, not to exceed the original face amount of the policy;

(C)(i) Prior to the death of the contract beneficiary, if the contract is irrevocable, the prepaid contract purchaser shall not have the right to a refund of any funds paid to the seller, but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy.

(3) In the case of a prepaid contract funded by an annuity:

(A) Prior to the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser [ ] annuity funding the prepaid contract;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser, or his designee, shall be entitled to receive not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premium paid by the purchaser;

(C)(i) Prior to the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds

paid to the seller, but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser;

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premiums paid by the purchaser.

**23-40-123. Delinquency proceedings.**

(a) The Insurance Commissioner may apply to a court of competent jurisdiction for an order appointing him in his official capacity as receiver of and directing him to conserve, rehabilitate or liquidate a prepaid funeral benefits contracts licensee upon one (1) or more of the following grounds:

(1) The licensee has not maintained trust funds received from contracts in the manner required by Arkansas Code 23-40-114;

(2) The licensee has allowed its permit to lapse, or be revoked in accordance with this chapter, and has not made a full and complete accounting and restitution, if appropriate, of all prepaid funeral benefits contracts funds deposited with it;

(3) The licensee is impaired or insolvent;

(4) The licensee has refused to submit its books, records, accounts or affairs to reasonable examination by the Insurance Commissioner;

(5) The licensee or any officer, director, or manager of the licensee has refused to be examined under oath concerning the licensee's affairs;

(6) There is reasonable cause to believe that there has been embezzlement, misappropriation or other wrongful misapplication or use of trust funds or fraud affecting the ability of the licensee to perform its obligations under prepaid funeral benefits contracts sold or assumed by the licensee;

(7) The licensee has failed to file its annual report within the time required by law and, after written demand by the Insurance Commissioner, has failed to promptly give an adequate explanation for such failure.

(b) Circuit courts shall have original jurisdiction of all delinquency proceedings under this chapter, and any such court is authorized to make all necessary or appropriate orders to carry out the purposes of this chapter.

(c) The venue of delinquency proceedings against a licensee shall be in the Circuit Court of Pulaski County.

(d) Delinquency proceedings instituted pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a licensee, and no court shall entertain a petition for the commencement of such proceedings unless the petition has been filed in the name of the state on the relation of the Insurance Commissioner.

(e) The Insurance Commissioner shall commence any such proceeding by application to the court for an order directing the licensee to show cause why the Insurance Commissioner should not have the relief prayed for in the application. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the prepaid contracts purchaser, contract beneficiaries or the public may require.

(f) An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of proceedings embraced therein.

SECTION 11. Compliance with this act shall be required for all licensees on and after March 16, 1997.

SECTION 12. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 14. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION . EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 23-10-116 requires all organizations which sell contracts for prepaid funeral benefits to file annual reports and submit annual report fees on or before March 15th of each year; that this act modifies the annual report fee schedule and should therefore become effective on March 16, 1997; and unless this emergency clause is adopted the provisions of his act will not become effective until several months after March 16, 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public



peace, health and safety shall become effective March 16,  
1997.